

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

R.M.S. TITANIC, INC.,
Successor in interest to Titanic
Ventures, limited partnership,

Plaintiff,

v.

Civil Action No.: 2:93cv902

The Wrecked and Abandoned
Vessel, . . . believed to be
The RMS TITANIC, in rem,

Defendant.

DECLARATION OF JAMES I. MCCLAMMY

1. My name is James I. McClammy. I am an attorney at the law firm of Davis Polk & Wardwell LLP and represent the Trustees of the National Maritime Museum. I submit this declaration in support of the Motion to Intervene of the Trustees of the National Maritime Museum.

2. Attached hereto as Exhibit 1 is a true and correct copy of a news article titled, "Titanic artefacts could return to Belfast," as retrieved from <https://www.bbc.co.uk/news/uk-northern-ireland-44939389> on August 14, 2018.

3. Attached hereto as Exhibit 2 is a true and correct copy of a news article titled, "James Cameron: Getting Titanic Artifacts to U.K. Would Be 'a Dream,'" as retrieved from <https://www.nationalgeographic.com/science/2018/07/news-titanic-uk-belfast-bankruptcy-cameron/> on August 14, 2018.

4. Attached hereto as Exhibit 3 is a true and correct copy of the transcript of the status conference held on July 25, 2018 before the United States Bankruptcy Court for the Middle District of Florida relating to the chapter 11 cases involving RMS Titanic, Inc.

I declare under penalty of perjury that the forgoing is true and correct.

Signed in New York, New York on the 17 day of August, 2018.

/s/ James I. McClammy

James I. McClammy

Exhibit 1

Titanic artefacts could return to Belfast

By Mark Simpson BBC News NI

24 July 2018

Artefacts recovered from the shipwreck of the Titanic could soon be returning to Belfast where the liner was built.

A multimillion-pound campaign began on Tuesday to try to buy the 5,500 artefacts from an American company and bring them to the UK.

If successful, many of the artefacts would go on display at the Titanic Belfast exhibition centre.

The collection includes a piece of the hull and sets of china from the ship which sank in April 1912.

There is no guarantee the bid will succeed but the campaign is being backed by James Cameron, the Oscar-winning filmmaker who made the 1997 movie Titanic.

"The sinking of the Titanic was a heart-breaking moment in history," he said.

"Securing the irreplaceable collection of artefacts, protecting and preserving them for future generations, by placing them in the public trust, is a unique and important opportunity to honour the 1,503 passengers and crew who died."

The current owners of the collection, Premier Exhibitions, have filed for bankruptcy in the United States.

A number of different bidders are trying to buy the artefacts.

Conal Harvey, deputy chairman of Titanic Belfast, said: "We are campaigning to bring these artefacts home, where they will be protected and preserved through public ownership and on display for the world to enjoy."

The \$20m (£15m) campaign is being backed by Royal Museums Greenwich, National Museums Northern Ireland, Titanic Belfast and Titanic Foundation Limited.

The artefacts were recovered from the seabed over the course of seven deep sea expeditions between 1987 and 2004.

National Geographic has already pledged \$500,000 (£380,000) to the campaign.

Dr Robert Ballard, the oceanographer who discovered the Titanic wreck, is supporting the venture.

"This bid is the only viable option to retain the integrity of the Titanic collection," he said.

"The collection deserves to be returned home to where its journey began."

Legal proceedings are continuing in the US over the bankruptcy and are expected to come to a conclusion soon.

The Titanic was the world's largest passenger ship when it entered service.

It sank on its maiden voyage in 1912 with the loss of more than 1,500 lives.

Exhibit 2

James Cameron: Getting Titanic Artifacts to U.K. Would Be 'a Dream'

Museums launch a \$19.2 million bid to acquire artifacts salvaged from the wreck site, and National Geographic pledges \$500,000 to the cause.

BY [MICHAEL GRESHKO](#)

PUBLISHED JULY 24, 2018

In 1912, the *RMS Titanic* crashed into an iceberg and sank into the frigid North Atlantic, killing more than 1,500 people. Soon after the wreckage's 1985 discovery, the private company [RMS Titanic Inc.](#) gained exclusive rights to salvage the wreck, eventually recovering some 5,500 artifacts. Many of these objects—from statuettes to the shoes of the victims—have since traveled the world as centerpieces of museum shows and privately run exhibits.

In 2016, RMS Titanic Inc. and its owner [Premier Exhibitions](#) filed for bankruptcy, leaving their *Titanic* collection's fate uncertain. Now, on the eve of a major bankruptcy court hearing, a coalition of British and Irish institutions has kicked off a fundraising campaign to bring the entire collection home—back to the islands that built and managed the ill-fated liner.

[\(Read our in-depth coverage of the museums' bid and the complex history of the salvaged *Titanic* artifacts.\)](#)

“These artifacts, which are of great historical significance, are at risk of being spilt up, sold to private collectors and lost as an identifiable collection,” [Conal Harvey](#), vice chairman of [Titanic Belfast](#), the museum next to the shipyards that birthed *Titanic*, said in a statement. “Therefore, we are campaigning to bring these artifacts home, where they will be protected and preserved, through public ownership and on display for the world to enjoy.”

The campaign aims to raise \$19.2 million in support of a bid to acquire the artifacts that the U.K.'s [National Maritime Museum](#) and [National Museums Northern Ireland](#) recently filed in U.S. bankruptcy court. If their bid is successful, the museums say that they would absorb the artifacts into their permanent collections. Titanic Belfast would display the majority of the artifacts, and the National Maritime Museum will take the lead on conserving them.

At the press conference, the National Geographic Society also made a \$500,000 pledge toward the campaign. The announcement comes a year after the Society quietly convened a meeting attended by the bidding institutions, the *Titanic* wreck site's discoverer [Robert Ballard](#), and *Titanic* film director [James Cameron](#) that focused on how to keep the salvaged artifacts in the public trust. (National Geographic Partners, the media company that produced this article, is partially owned by the National Geographic Society.)

“The repatriation of the shipwreck's artifacts presents an historic opportunity to honor the *Titanic*'s lasting legacy and the memories of all who perished,” says Michael L. Ulica, the National Geographic Society's interim president and CEO, in a statement. “As the first private donor to contribute to this effort, National Geographic is excited to be part of this latest chapter of the *Titanic*'s history and to support the initiative to bring these artifacts home.”

“From the moment when we first raised this idea [at the 2017 meeting], it was a dream. But with the bid going in, and actual funds on the table...I wouldn't give it odds, but I think they're very good,” says Cameron, a National Geographic explorer-at-large who has dived the *Titanic* wreck site 33 times. “I can't imagine the court not looking on it favorably—there's just too much right about it.”

In addition to securing the artifacts, the museums would obtain RMS Titanic, Inc.'s status of “salvor-in-possession,” meaning that the museums would have the exclusive rights to salvage the wreck.

The institutions have no plans to further salvage the wreck, however, and say they would maintain the salvage rights only to prevent others from doing so.

As National Geographic has [previously reported](#), two groups of Premier's equity holders have filed competing bids in bankruptcy court for RMS Titanic, Inc. and its artifacts. However, the world's most prominent *Titanic* experts have lined up behind the museums.

“The *Titanic* was always meant to turn around and come back home but never did,” said Ballard, a National Geographic explorer-at-large, in a [previous interview](#). “This helps gives closure.”

The fundraising campaign begins the day before the museums consortium and the other bidders for RMS Titanic, Inc. have a hearing in U.S. bankruptcy court. The hearing won't provide a final say on the future owners of *Titanic*'s treasures; rather, it will focus on how the three competing plans will be weighed against each other. The museums' lawyers expect that proceedings will continue for several more months.

Exhibit 3

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

RMS TITANIC, INC., et al., CASE NO: 3:16-bk-02230-PMG
Debtors.

/

TRANSCRIPT OF PROCEEDINGS

DATE TAKEN: July 25, 2018
TIME: 1:30 p.m. - 3:25 p.m.
PLACE: United States Courthouse
300 North Hogan Street
Courtroom 4A
Jacksonville, Florida 32202
BEFORE: The Honorable Paul M. Glenn
U.S. Bankruptcy Judge

This cause came on to be heard at the time and place
aforesaid, when and where the following proceedings
were transcribed by:

Cindy Danese, Notary Public
STATEWIDE REPORTING SERVICE
233 East Bay Street, Suite 912
Jacksonville, Florida 32202
(904) 813-9280

A P P E A R A N C E S

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BRIAN A. WAINGER, ESQUIRE
WILLIAM POYNTER, ESQUIRE (via telephone)

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Hotel and Casino

JENNIFER FELDSHER, ESQUIRE
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APPEARANCES (CONTINUED)

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Lange Feng, and PacBridge Capital Partners

JOHN ISBELL, ESQUIRE

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MATTHEW TROY, ESQUIRE

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STEVEN FOX, ESQUIRE

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ROBERT CHARBONNEAU, ESQUIRE

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HOWARD SIEGEL, ESQUIRE (via telephone)

Attorney for Euclid Claims Recovery, LLC

DAWN MCCARTY, ESQUIRE (via telephone)

Attorney for Bloomberg, LP

MIRIAM SUAREZ, ESQUIRE

Attorney for the U.S. Trustee

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P R O C E E D I N G S

July 25, 2018 1:30 p.m.

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THE COURT: All right. Court's in session for July 25th, and on the calendar this afternoon is the case of RMS Titanic, Chapter 11 case.

We're set this afternoon for a status conference. Also, an objection to Claim 29-1 and objection to Claim 2 of B.E. Capital Management.

There are appearances in the courtroom and by conference telephone.

Court will first take appearances of those in the courtroom.

MR. BLANKS: Good afternoon, Your Honor. Daniel Blanks on behalf of the Debtors. Also at counsel table is my co-counsel, Harris Winsberg and Matt Brooks from Troutman Sanders. And also other co-counsel, Brian Wainger from Kaleo Legal. And also, Your Honor, Jessica Sanders who is corporate secretary of the Debtor.

THE COURT: Very good. Mr. Blanks, gentlemen and ladies, good afternoon.

Other appearances.

MR. BROWN: Your Honor, may it please the Court, Jay Brown and Katie Fackler of Ackerman,

1 LLP, along with my co-counsel, Peter Gurfein of
2 Landau Gottfried & Berger, appearing on behalf of
3 the Official Committee of Equity Security Holders
4 of Premier Exhibition, Incorporated.

5 THE COURT: Very good. Mr. Brown, Ms.
6 Fackler, Mr. Gurfein.

7 MR. CHUBAK: Good afternoon. Jeffrey Chubak
8 with Storch Amini, PC on behalf of the Creditors
9 Committee. With me is Rick Thames and Rob Heekin,
10 Jacksonville counsel. And Ezra Jones, a member of
11 the Committee is in the courtroom as well.

12 THE COURT: Very good. Mr. Chubak, good
13 afternoon, and others.

14 MR. ISBELL: Good afternoon, Your Honor. John
15 Isbell on behalf of the debtor-in-possession
16 lender, Bay Point Capital.

17 THE COURT: Mr. Isbell.

18 MS. REDMOND: Good afternoon, Your Honor.
19 Patricia Redmond appearing on behalf of the
20 National Maritime Museum. Your Honor, I'm joined
21 by Timothy Graulich and Jacob Weiner from the Davis
22 Polk law firm.

23 THE COURT: Ms. Redmond, Mr. Graulick, Mr.
24 Weiner.

25 Other appearances.

1 MR. GROSSMAN: Good afternoon, Your Honor.
2 Scott Grossman of Greenberg Traurig on behalf of
3 Lange Feng, Jihe Zhang, HaiPing, PacBridge Capital
4 Partners, and as cocounsel to Premiere Acquisition
5 Holdings, LLC. And with me in the court whom I'd
6 like to introduce to Your Honor is Mr. Giovanni
7 Wong of PacBridge Capital Partners who is here from
8 Hong Kong.

9 THE COURT: Very good. Mr. Wong, Mr.
10 Grossman, good afternoon.

11 MS. FELDSHER: Good afternoon, Your Honor.
12 Jennifer Feldsher from Bracewell on behalf of Alta
13 and Apollo. With me in the courtroom is Mr. Busey
14 from the Smith Hulsey & Busey firm, and on the
15 phone I believe we have several of our clients as
16 well listening in.

17 THE COURT: Very good. Thank you. We'll take
18 telephone appearances in a minute.

19 Any other appearances in the courtroom?

20 MR. TROY: Good afternoon, Your Honor.
21 Matthew Troy, United States Department of Justice,
22 civil division, on behalf of NOAA.

23 THE COURT: Very good. Mr. Troy.

24 Others in the courtroom?

25 MS. SUAREZ: Good afternoon, Your Honor.

1 Miriam Suarez on behalf of the United States
2 Trustee.

3 THE COURT: Ms. Suarez.

4 Any other appearances in the courtroom?

5 MR. FOX: Yes, Your Honor. Good afternoon.
6 I'm Steven Fox. I represent Cedar Bay and related
7 companies. Present in the courtroom today with me
8 is Mr. Paul Burns, spelled B-u-r-n-s. He is the
9 curator of Cedar Bay's artifact collection of
10 Titanic artifacts. He's also the curator of the
11 largest privately owned Titanic collection in the
12 United States.

13 THE COURT: Very good. Mr. Burns, good
14 afternoon, and Mr. Fox.

15 MR. BURNETT: May it please the Court, Jason
16 Burnett of the law firm Gray Robinson appearing on
17 behalf of 417 LLC and the Luxor Hotel. Also
18 appearing with me, Your Honor, is Ms. Ashley
19 Edwards, my associate, and Ms. Ashley England, our
20 summer law clerk, who is here with us from
21 Tallahassee today.

22 THE COURT: Very good. Ms. Edwards, Ms.
23 England and Mr. Burnett, good afternoon.

24 Any other appearances in the courtroom? Are
25 there any rows left back there?

1 (Laughter.)

2 THE COURT: Now there are several appearances
3 by conference telephone.

4 First for the Committee of Equity Security
5 Holders, telephone appearance for that.

6 MR. CHARBONNEAU: Good afternoon, Your Honor.
7 Robert Charbonneau appearing as special litigation
8 counsel for the Premier Equity Committee.

9 THE COURT: Mr. Charbonneau, good afternoon.

10 MR. CHARBONNEAU: Good afternoon, Your Honor.

11 THE COURT: Telephone appearance for Ad Hoc
12 Equity Group. Mr. Lawton?

13 MR. LAWTON: Good afternoon, Your Honor. It's
14 David Lawton appearing for the Ad Hoc Equity Group
15 of Alta and Apollo. My colleague, Jennifer
16 Feldsher.

17 THE COURT: Very good, Mr. Lawton.

18 Now telephone appearance for interested party
19 Bloomberg, LP, Ms. McCarty.

20 MS. MCCARTY: Yes, Your Honor, I'm on.

21 THE COURT: All right. And telephone
22 appearance for the Debtor, Mr. Poynter.

23 MR. POYNTER: Good afternoon, Your Honor.
24 This is William Poynter for the Debtor. And with
25 me on the phone I have the CEO of the Debtor, Mr.

1 Mr. Daoping Bao.

2 THE COURT: Very good. Mr. Poynter, Mr. Bao,
3 good afternoon.

4 MR. BAO: Good afternoon, Your Honor.

5 THE COURT: Telephone appearance for Euclid
6 Claims Recovery.

7 MR. SIEGEL: Yes. Good afternoon, Your Honor.
8 Howard Siegel for Euclid Claims Recovery.

9 THE COURT: Very good.

10 And telephone appearance for trustees of the
11 National Maritime Museum.

12 (No response.)

13 THE COURT: Mr. Weiner? Yes, no?

14 MR. GRAULICH: Your Honor, Mr. Weiner's in the
15 courtroom.

16 THE COURT: Oh, sorry. Thank you.

17 All right. Any other appearances?

18 (No response.)

19 THE COURT: No? Very good.

20 Well, we're set for a status conference. Mr.
21 Blanks or Mr. Winsberg.

22 MR. WINSBERG: Good afternoon, Your Honor.
23 Harris Winsberg from Troutman Sanders on behalf of
24 the Debtors.

25 As you can see, we have a full courtroom for a

1 status conference. Today is a very important day
2 for the course of this case.

3 If Your Honor would permit, what I'd like to
4 do is give the Court a case update. Then I'd like
5 to review for Your Honor the capital structure of
6 the company and the cash flow of the company --

7 THE COURT: Yes.

8 MR. WINSBERG: -- talk about the different
9 proposals and the Debtors' proposed path forward,
10 if that would be fine with Your Honor.

11 THE COURT: Yes, thank you.

12 MR. WINSBERG: Thank you, Your Honor.

13 Since the Court had the hearing on June 7th on
14 the trustee motion, the Debtors have worked
15 continuously around the clock to paper the term
16 sheet that we had filed with the Court on June 5th
17 prior to the hearing.

18 And the Debtors were successful in that
19 endeavor, and on June -- as Your Honor is aware, on
20 June 15th, the Debtors filed their motion to
21 approve the bid procedures and ultimately a sale
22 pursuant to the Asset Purchase Agreement entered
23 into with the stalking horse purchaser.

24 The negotiations were extensive in connection
25 with the APA process.

1 Your Honor is aware the stalking horse
2 purchaser has provided a 10-percent deposit with
3 SunTrust Bank as escrow agent, so \$1.75 million.
4 And Apollo, Alta and PacBridge have each provided
5 equity commitment letters to agree to fund the
6 acquisition vehicle, the remainder of the purchase
7 price.

8 At the last hearing in front of Your Honor,
9 one of the issues why it took us a little longer
10 than we wanted to get the APA on file was there
11 were significant discussions with the buyer,
12 primarily around the appropriate way to transaction
13 the sale of the Canadian entities.

14 As Your Honor will recall, Dinoking is an
15 non-debtor entity. It operates, but it is not
16 subject to this Court's Chapter 11 jurisdiction.

17 That issue, Your Honor, I'm pleased to report,
18 was resolved in the Asset Purchase Agreement, and
19 in particular on page 43 in section 5.18. In
20 short, what was structured was there was a
21 possibility that the Debtors were going to have to
22 file Dinoking as a Chapter 11 debtor to effectuate
23 the sale.

24 And I'm pleased to report that, since we filed
25 the Asset Purchase Agreement, the stalking horse

1 purchaser has been satisfied with the due diligence
2 that it conducted and it's no longer going to
3 require the Debtors to file Dinoking as a Chapter
4 11 debtor and make it a part of the sale process to
5 effectuate a sale.

6 And that's significant, Your Honor, and that's
7 going to avoid hundreds of thousands of dollars in
8 administrative expense costs, so that is a very
9 good result.

10 I'm also pleased to report the Debtors have
11 been in contact with counsel for NOAA, who's in the
12 courtroom, and we have resolved NOAA's informal
13 objections to the bid procedures and sale order,
14 with some modifications that we've agreed upon with
15 their counsel that we would submit to the Court at
16 the appropriate time.

17 As to the capital structure and cash flow,
18 Your Honor, just by background, I think it would be
19 helpful and we can provide the Court with a
20 supplemental documentation with this.

21 We have -- as Your Honor is aware, we have a
22 DIP loan that's got \$5 million that's fully drawn.
23 It's accruing interest roughly at \$55,000 a month.

24 We have Mr. Grossman's clients, the secured
25 lenders, that are owed roughly \$4 million in

1 principal and interest.

2 We have projected unpaid and accrued
3 professional fees through the end of September of
4 \$3.5 million in administrative claims. And based
5 upon the accrual since January of this year, we're
6 tracking roughly \$270,000 a month in admin expenses
7 that are being accrued.

8 There's unsecured priority claims of \$250,000.

9 And there's an unsecured creditor pool, which
10 just by rough numbers ranges anywhere from \$11- to
11 \$13 million, depending on how claim objections were
12 to be resolved and also depending on whether Your
13 Honor would approve the PacBridge settlement which
14 is part of the APA which we'll get to, but those
15 are just rough numbers.

16 So the current monthly burn rate for the DIP
17 loan with the interest and the professional fees,
18 it's roughly just say \$325,000 a month, that every
19 month we go along we don't have an exit, that's the
20 burn rate for admins and interest.

21 And based upon our review of the capital
22 structure, Your Honor, a transaction would have to
23 clear \$24 million before there would be any money
24 for equity in this case.

25 And finally, Your Honor, from a cash flow

1 perspective -- and Mr. Glade's in the courtroom
2 from Glass Ratner -- and this is a status
3 conference, and we can put to prove that we add to
4 Your Honor all of these issues.

5 From a cash flow perspective, even if the
6 company -- the company right now is deferring
7 capital expenditures. It's not reinvesting in
8 itself right now to preserve cash. Even if the
9 company doesn't pay any cap ex and foregoes paying
10 any additional professional fees, which at this
11 point is a moot point, Your Honor. With the DIP
12 loan fully drawn, there's not money sufficient to
13 pay the professional fees under the monthly orders.
14 But even if we don't pay the cap ex and they don't
15 pay any more professional fees and just accrue
16 them, the company runs out of cash at the end of
17 December. It's cash flow negative in January and
18 February.

19 If the company were to defer cap ex and pay
20 professional fees, what it could pay, it would run
21 out of money at the end of September.

22 So either way, under the current structure,
23 Your Honor, this case is on a short leash.

24 Now, turning to the transactions with that
25 overview, I'd like to discuss the Debtors' proposed

1 transactions in front of Your Honor, as well as the
2 Equity Committee and Creditors Committee disclosure
3 statements.

4 As to the Equity Committee and Creditors
5 Committee disclosure statements and plans, Your
6 Honor, we respectfully submit that these plans are
7 highly speculative and unconfirmable on their face.

8 As Your Honor is aware, 1129(a)(11) requires
9 that a plan be feasible. And as Judge Funk said in
10 the JRV Industries case, 344 BR 679, a bankruptcy
11 court decision from 2006, the feasibility test is
12 designed, quote, primarily to prevent confirmation
13 of a visionary scheme that promises a greater
14 distribution than the debtor's plan components
15 could ever attain.

16 And what we have here are two plans by the
17 Equity Committee and the Creditors Committee that
18 on their face are simply visionary schemes.
19 They're not appropriate to go out for solicitation.

20 I'll turn to the Creditors Committee proposal
21 first.

22 The Creditors Committee disclosure and plan
23 was filed almost a month ago on June 29th. It
24 contemplates a private sale. In other words, there
25 would be no auction process.

1 One of the plan proponents, as a member of the
2 Creditors Committee -- and we put those in our
3 papers -- I don't think it's contested that Mr.
4 Sanna, as the CEO of Running Subway, which is a
5 buyer, proposed buyer in the transaction, and he's
6 also the CEO of TSX, which is a member of the
7 Creditors Committee.

8 More importantly, the Disclosure Statement
9 fails to do four key things.

10 One, it doesn't have a signed purchase
11 agreement, or a list of contracts to assume or
12 reject, and, frankly, who is responsible for any
13 cure claims.

14 Two, it doesn't have a timeline to prepare,
15 file, and ultimately close on a signed purchase
16 agreement, which is significant because of the burn
17 rate in this case and the pending liquidation of
18 these Debtors.

19 Three, they have not and will not post a
20 deposit, and certainly not a deposit that could be
21 forfeited to the bankruptcy estate if they breach
22 or fail to obtain the funding, at least to date.

23 And, four, they don't have the money to pay
24 the purchase price or even a firm timeline to
25 obtain the financing.

1 So even in the event that the plan and
2 disclosure statement were to go out to solicitation
3 to get the votes necessary, Your Honor still
4 couldn't approve it under 1129(a)(11) because it's
5 not feasible.

6 But, more important, even if Your Honor did
7 approve the plan, what happens if the plan
8 proponents fail to secure their financing? The
9 estates are left with significant fees and costs,
10 and yet there's still no exit, and the company is
11 facing liquidation and the loss of approximately
12 150 jobs.

13 The same is true for the Equity Committee
14 disclosure statement and plan. It was filed almost
15 two months ago on June 1st. The Equity Committee
16 plan, it too is not feasible and doesn't have the
17 support of any -- certainly doesn't have the
18 support of the Creditors Committee in this case,
19 either. It has shortcomings, five that are
20 notable, Your Honor.

21 There's no identified purchaser for the
22 artifacts, and certainly not any signed purchase
23 agreements.

24 There's no timeline to prepare, file, and
25 ultimately sell the artifacts as contemplated in

1 the disclosure statement and plan.

2 There's no deposit from any third party, or
3 even a firm commitment or a backstop from a party
4 guaranteeing a minimum purchase price for the
5 artifacts that would go to the estate.

6 It, too, lacks financing, which is needed to
7 -- they'd have to pay off or refinance the DIP
8 loan. They'd have to pay in full the
9 administrative claims, pay the secured claims, the
10 unsecured priority claims in full on an effective
11 date, which may occur months from now, if at all,
12 and they don't have the money sufficient to run the
13 company for that period of time to get to auction,
14 which we estimate to be a year or longer.

15 And, most importantly, as we noted at the last
16 hearing, as NOAA stated in its Equity Committee
17 disclosure statement objection, the Equity
18 Committee can't sell the artifacts, at least off
19 the bat, even if Your Honor were to confirm a plan,
20 without litigating with the Department of Justice
21 for some unspecified period of time, possibly
22 years.

23 So similar to the Creditors Committee
24 disclosure, even in the unlikely event the Equity
25 Committee got the votes, the Court could not

1 confirm the plan because it's not feasible.

2 And even if Your Honor did confirm the plan,
3 just like with the Creditors Committee, what
4 happens when they -- if they fail to secure other
5 financing, which is over \$10 million, and/or fails
6 to get the authority by a final order to sell the
7 artifacts? Again, the estates are left holding the
8 bag with additional fees and costs, and yet there's
9 no exit.

10 I'd like to talk about the merits of our
11 proposed transaction with the stalking horse, Your
12 Honor, if I may.

13 The stalking horse purchaser has the money and
14 they're ready to close on the transaction in the
15 time frame we set forth.

16 Contrary to some stuff that we've read in the
17 press, RMST and the people that currently manage
18 the collection will remain in place and continue to
19 comply with the revised covenants and conditions,
20 meaning that the collection will not be broken up
21 and will be available for all people to see, not
22 just people that happen to visit the United
23 Kingdom.

24 The transaction avoids liquidation and
25 preserves 150 jobs.

1 And while the Creditors Committee plan has a
2 nominally higher price, \$1.7 million, as noted, the
3 Creditors Committee plan has no funding and no
4 timeline. And with a burn rate of roughly \$325,000
5 a month in professional fees and interest alone,
6 any potential increase in recovery is going to
7 quickly evaporate.

8 Simply put, the \$17.5 million that we propose
9 now, subject to an open bidding process and
10 hopefully more, is better than \$19.2 million, which
11 is not subject to better and higher offers in
12 whatever time period is required to raise the
13 money, if they ever can.

14 And, finally, the Debtors' proposal, should
15 Your Honor move forward with the bid procedures and
16 ultimately the sale hearing we hope Your Honor
17 does, it has what we call the PacBridge settlement
18 in our proposal.

19 As you recall, there's \$4 million in secured
20 claims owed to Mr. Grossman's clients. Under what
21 we're calling the PacBridge settlement, they would
22 agree to take a \$1 million secured claim. They'd
23 waive \$1 million, which is essentially their
24 postpetition interest. They would take the other
25 \$2 million of the principal and treat it as an

1 unsecured claim subject to pro rata distribution,
2 and then PacBridge would be allowed to file a proof
3 of claim for \$1.1 million, approximately, and they
4 would have an allowed claim against the estate.

5 That claim was originally objected to by the
6 Debtors. We never served process on it. That's
7 all before my time in this case, Your Honor.

8 We understand the Equity Committee, for
9 whatever reason, filed its own objection to that
10 claim. But even under the museum and Running
11 Subway proposal, the Creditors Committee plan, if
12 they want to buy the company as a whole, you have
13 to buy the Dinoking subsidiary. So if you're
14 buying that subsidiary, you have to deal with the
15 PacBridge claim in any event, even if it was
16 disallowed against the estate, because the primary
17 argument is that it's not a claim against the
18 Debtor, it's a claim against a non-debtor entity.
19 You still have to deal with it because you couldn't
20 -- nobody could buy the Dinoking assets and make a
21 distribution from Dinoking to Premier without
22 dealing with and paying that claim in full in any
23 event. So the claim has to be addressed.

24 Briefly, there was in the papers, on the
25 motion for a status conference, there was a lot of

1 discussion about this Court's jurisdiction. If I
2 may, Your Honor, I'd like to spend a couple of
3 minutes on that, if that's okay.

4 THE COURT: Uh-huh.

5 MR. WINSBERG: Your Honor, we believe the
6 process we put in place is the best and most
7 efficient manner to deal with this case.

8 This Court is in the best position to decide
9 whether to approve the bid procedures and
10 ultimately decide which purchaser is providing the
11 highest and otherwise best offer for the company.

12 Once this Court makes those decisions, the
13 district court in Virginia, which people are
14 calling the admiralty court, it can decide whether
15 the transaction complies with the revised covenants
16 and conditions, and that district court is going to
17 get the benefit of the input from NOAA and
18 Department of Justice, which is in the courtroom.

19 As we told Your Honor at the last hearing,
20 RMST did file a motion in the admiralty court
21 seeking approval of the stalking horse purchaser or
22 whatever prevailing bidder Your Honor decides at
23 the conclusion of the sale hearing to go forward
24 with.

25 So we have a two-step process that we believe

1 satisfies the jurisdiction of the bankruptcy court
2 and ensures that the admiralty court gets an
3 appropriate say on whether the revised covenants
4 and conditions are being complied with.

5 Your Honor, a couple of final points.

6 There is chapter -- someone mentioned there is
7 Chapter 11 fatigue in this case. And if I asked
8 everyone to raise their hand that's worked -- I've
9 worked in it four months. If I asked everyone to
10 raise their hand if they've got fatigue in the
11 Chapter 11 case, I'm pretty sure everybody would
12 raise their hand.

13 The Debtors have spent too long in Chapter 11.
14 We don't have the funds to pay the professional
15 fees under the Court's orders, and we're already
16 deferring capital expenditures necessary to
17 preserve the going concern, which is hurting the
18 business.

19 The company's going to run out of cash even if
20 it doesn't pay the professionals by the end of
21 December, and negative cash flows in January and
22 February.

23 We respectfully request Your Honor allow us to
24 go forward and set the bid procedures down for
25 hearing to sell the assets under 363. We believe

1 this case meets the Lionel standard, if there ever
2 was a case that met the Lionel standard at this
3 point to sell it. It's an open and fair process.
4 People can come in and qualify and bid, and we can
5 move this case to a conclusion.

6 That being said, Your Honor, we did note Your
7 Honor did move the bid procedures off hearing today
8 and wanted a status conference. Should Your Honor
9 be inclined to give parties more time, here's what
10 we would propose.

11 The Court -- one, the Court should propose,
12 provide, a firm deadline of not more than 30 days
13 from today for the Creditors Committee plan
14 proponents to come up with a -- actually come up
15 with the money for the \$19.2 million purchase
16 price.

17 If the plan -- if the Creditors Committee plan
18 proponents cannot come up with the actual money
19 within that 30-day time period, the Court should
20 move forward only with the bid procedures that you
21 set down for hearing that the Debtors have set
22 forth in their sale motion.

23 If the Creditors Committee plan proponents can
24 come up with the actual funds within the next 30
25 days, the Court can take up the Creditors Committee

1 disclosure statement in connection with the
2 Debtors' bid procedures at that hearing.

3 Frankly, at that point, Your Honor, if they've
4 got the money, they should just participate in the
5 auction, because, even under our bid procedures, if
6 they're fully funded and put up a refundable
7 deposit, they're a topping bid under our bid
8 procedures. They just need to put up a refundable
9 deposit and show the money.

10 And finally, one last point here, Your Honor,
11 because the Debtors' transaction and the Creditors
12 Committee's transaction both -- both offers fall
13 well short of \$24 million, which is the minimum
14 amount needed for return on equity, this Court --
15 we propose this Court put the Equity Committee's
16 disclosure statement and plan on ice and stay any
17 further action by the Equity Committee until
18 further order of the Court.

19 The professional fee burn is intolerable in
20 this case, Your Honor. We are facing -- we got
21 served with 10 subpoenas. It's like they swatted a
22 gnat with a baseball bat or a Howitzer. And at
23 this point, Your Honor, with Equity clearly out of
24 the money, I would like -- we'd like, if Your Honor
25 wants to go with that proposal, give the Creditors

1 Committee a chance to come up with the money, stay
2 the Equity Committee because they're hopelessly out
3 of the money, put our bid procedures on so we can
4 put up our offer of proof, we can show Your Honor
5 we meet the standards, an open and fair process,
6 and we believe, Your Honor, that is going to
7 provide the highest likelihood of a successful
8 outcome and exit from this bankruptcy case.

9 And, most importantly, what's getting lost,
10 preserve the going concern of this business which
11 educates. This company educates, Your Honor. It's
12 an exhibition company. Most of the people that
13 come are students that are -- education on the
14 Titanic artifacts, education on dinosaurs, on
15 bodies exhibits. Preservation of this important
16 critical public role is critical. And the
17 preservation of 150 jobs should not be lost either,
18 Your Honor.

19 So, in sum, Your Honor, we respectfully submit
20 that Your Honor set the bid procedures down for
21 hearing as quickly as Your Honor can.

22 If Your Honor is inclined, give the Creditors
23 Committee a little bit more time -- not much -- to
24 come up with the monies. And with the Equity
25 Committee, you should stay it, Your Honor.

1 THE COURT: Thank you very much, Mr. Winsberg.

2 MR. WINSBERG: Thank you, Your Honor.

3 THE COURT: Thank you very much.

4 MR. GRAULICH: Good afternoon, Your Honor.

5 Timothy Graulich of Davis Polk & Wardwell on behalf
6 of the National Maritime Museum.

7 Your Honor, I want to just put a few things
8 that counsel said in context. And, frankly, some
9 of the framework suggested by counsel may actually
10 not be too far off of something that might work,
11 but let me just -- let me just start.

12 The National Maritime Museum, just by way of
13 background, is a public museum in the UK. It's
14 sponsored by the UK's Department of Culture, Media
15 and Sport just like, for example, the British
16 museum. So it and its sister museums are the types
17 of museums that have cared for such artifacts as
18 like the Rosetta Stone for hundreds of years.

19 Our partners in this, particularly with
20 respect to the acquisition of the Titanic
21 artifacts, are Titanic Belfast and the National
22 Museums and Galleries of Northern Ireland, and that
23 geography is important. I know counsel indicated
24 these artifacts may be taken to the UK and maybe
25 only folks in the UK would be able to see them.

1 There is a very important historical
2 significance to the UK and Northern Ireland. The
3 ship was built in Northern Ireland. Titanic
4 Belfast is located on the very site of the
5 manufacturing of the ship. The UK is where the
6 ship departed from, and the UK is where the ship
7 was supposed to return to after the voyage.

8 It's for those reasons that very
9 significant -- maybe every significant Titanic
10 expert that has expressed an opinion at this point
11 is strongly in favor of this proposal.

12 This proposal has the backing of Dr. Robert
13 Ballard, as the Court well knows, but for the
14 benefit of the record, the individual who
15 discovered the artifacts in 1985.

16 It has the backing of National Geographic. It
17 has the backing of James Cameron, who, among other
18 things, in addition to being a philanthropist and a
19 deep-sea ocean explorer, was also the director of
20 the movie Titanic.

21 And those names, just to give it some context
22 also, the fundraising for our proposal has
23 commenced as of yesterday.

24 Now, you may ask yourself why is it, if this
25 has been going on for so long, has fundraising just

1 started now. And this is a discussion that we've
2 had for many months with the Debtors and their
3 professionals.

4 The issue is, we are not a hedge fund. We are
5 not here to get a return on investment in the
6 traditional sense. We are what we believe to be a
7 permanent home for these artifacts, a permanent
8 home in the sense of fully breathing life into the
9 conditions that encumber the artifacts, that they
10 would remain in perpetuity in public ownership and
11 remain as an integrated whole, and be cared for and
12 curated by the best and the brightest in the world,
13 frankly, at the museums.

14 And being a -- so there's obviously lots of
15 virtues to being this type of an institution. For
16 example, we believe we would be the best successor
17 trustee for the collection. But the flip side is
18 we don't have the ability to just go and write
19 checks.

20 Where does our funding sources come from?
21 Government sources and the donor community. Not
22 surprisingly, those sources are not going to say:
23 Let me give you a few million dollars so that you
24 can put it at risk, and if you don't get the rest
25 of the money, we lose it, right? The UK government

1 doesn't work any different than any other
2 government; that's not going to happen.

3 We were able to and we proposed to the company
4 to put an amount in deposit to show our earnestness
5 and good faith, but it couldn't be -- it couldn't
6 be forfeited, and that was a -- and I don't want to
7 say an unreasonable issue, but it was an issue for
8 the Debtor.

9 And also the fundraising -- starting a
10 fundraising to say: You know what, it would be
11 great if I could get a war chest together, but I
12 don't really have an actionable transaction with
13 the Debtors, is not something that really works in
14 the donor community either.

15 So it was important before -- and as sort of a
16 condition to be able to start the fundraising to be
17 able to show that we actually have a transaction,
18 that we have an opportunity to present that
19 transaction in the judicial system, and that we
20 have a -- that we're going to get our day in court,
21 right? And that is why we were able to start the
22 fundraising yesterday.

23 And to speak to the question of -- I think
24 counsel indicated -- I think fatigue was the word
25 that he used. I'm actually feeling personally a

1 little fatigued because I came here last night via
2 Miami and I don't know that I've actually been
3 inside of a bed yet.

4 But fatigue is not -- these are such unique,
5 important artifacts. As Dr. Ballard has repeatedly
6 indicated, these artifacts are like, for example,
7 going -- this is almost like a cemetery where 1,500
8 people are buried. It is extraordinarily -- not
9 just the uniqueness of it, but the solemnity of
10 these artifacts are so important that things like
11 fatigue, while we're all feeling it, is something
12 that I think we're going to need to just power
13 through.

14 So let me just talk about the proposal for a
15 moment. So, again, as counsel indicated, the
16 purchase price would be \$19.2 million cash, which
17 is facially higher than the stalking-horse bid. It
18 has -- there's no denying it. It has the issues
19 that counsel indicated, which is that it's not
20 fully funded yet and we're in the process of
21 fundraising it.

22 But this bid would place the collection into
23 perpetual public ownership, and we think it is
24 precisely the type of transaction contemplated by
25 the conditions.

1 And so then let's talk then a bit about the --
2 we were among the moving parties that asked for
3 this hearing today, and basically what we're
4 looking for -- and this is key to our fundraising
5 -- is fairness. And there's three things I think
6 that come out of fairness.

7 One is with respect to the process and timing.
8 We, fortunately, are not looking for such a
9 significant period of time. I think the Debtors
10 were talking about potentially running out of cash
11 at the end of December. We're talking about trying
12 to have a confirmation hearing perhaps in the
13 latter part of September. We're not looking for --
14 we're not looking to push this back an incredible
15 amount of time. Frankly, given where we are right
16 now, it's possible that a plan process is perhaps
17 only a few weeks longer than a sale process would
18 be.

19 And then once you talk about a process -- so
20 basically we would be very supportive of a process
21 that allowed -- obviously I'm talking from my own
22 proprio views -- like to see our being treated at
23 least as well as the other proposals such that
24 nobody's on a faster timeline, those types of
25 things.

1 Secondly, with respect to fairness, and this
2 also I think dovetails a bit with costs. And I
3 would agree with counsel, there is a favor in this
4 case a bit of litigate first and then talk about it
5 later. What we would hope to -- that was part of
6 the request for this hearing today, was to maybe
7 get away from that a little bit.

8 If there are issues with respect to our
9 disclosure statement, we're very happy to talk
10 about them. I would note that some of the issues
11 that have been raised with respect to the
12 disclosure statement, not all but some of them,
13 actually stem from the fact that we don't have --
14 well, we have imperfect engagement with the
15 Debtors, we'll put it that way, without being sort
16 of over the top about it.

17 So the fact of the matter is, is that certain
18 things like getting us under an NDA so that we can
19 talk with other parties in the case and that other
20 parties in the case can show us a list of the
21 contracts that are going to be rejected or assumed
22 would be important. If there are issues about
23 claims calculations, I assume the Debtor has
24 already done that. And so I wouldn't ask the
25 stalking horse to sort of work cooperatively

1 necessarily with us on our end, but the Debtor's
2 sort of the fiduciary and the debtor-in-possession
3 here. There are certain things that may be
4 shortcomings in the disclosure statement that are
5 fixable and may be fixable with the assistance of
6 the Debtor.

7 To be clear, by the time of the disclosure
8 statement hearing, we probably won't have the money
9 in hand yet. The money is starting to come in, but
10 we'd be very happy to give the most fulsome update
11 that we could at the time of the disclosure
12 statement so that creditors are able to make an
13 informed decision as to the likelihood of whether
14 or not the money is going to be there.

15 Frequently -- not that multiple plans are a
16 frequent occurrence, but frequently when there are
17 multiple plans being voted on, creditors are given
18 a choice and a priority. You know: I think Plan C
19 I like the best, but I also like Plan B, but I like
20 that second best, so I could prioritize it.

21 We anticipate by confirmation we'll either
22 have the money or we'll be able to give a very
23 specific update about the near term of what it
24 would take to get the money such that the Court
25 would be aware in order to make a feasibility

1 finding.

2 I know frequently counsel has done what
3 frequently you see in a disclosure statement
4 hearing, and frequently judges say those are
5 confirmation issues, they're not disclosure
6 statement issues. We're not even at the disclosure
7 statement issue -- at the hearing yet. To sort of
8 hold us to a feasibility standard before the
9 process has even started, I think, is a bit high,
10 but we understand come confirmation we're going to
11 need to demonstrate feasibility.

12 This is not a visionary scheme. We are
13 engaged with some of the most important people in
14 this space. Again, lots of public support. You
15 know, not to name drop, but Liam Neeson has
16 narrated a piece for the fundraising. Again, James
17 Cameron -- all the types of folks -- Bob Ballard --
18 all the types of folks that you -- that have -- who
19 are concerned about how creditors are treated, but
20 are more concerned about the unique nature of these
21 artifacts and how they're being treated are
22 supportive of this transaction.

23 The third thing with respect to fairness that
24 I would just like to discuss for a second is the
25 interaction with the district court. And the

1 reason I say that is -- is that, again, without
2 trying to, you know, try to resolve these cases in
3 the most litigated manner, try to do it in the
4 least litigated manner, the conditions here are
5 replete with provisions that talk about the
6 district court having jurisdiction over these
7 artifacts, and if there's going to be a
8 transaction, having jurisdiction over that.

9 I understand what the Debtors are talking
10 about, about: Well, Judge, you should figure out
11 which one is best and then submit that to the
12 district court.

13 Maybe that's right, maybe that's the right way
14 to proceed. But maybe it's not, in the sense that,
15 if there are going to be multiple transactions that
16 go forward, you open the possibility of multiple
17 approvable transactions. Certainly, with competing
18 plans, you do end up with -- and there's case law
19 about this as to how the Court is supposed to look
20 at competing plans.

21 I don't know if there's any case law about a
22 competing plan with a sale motion, but, even if
23 there were, if we do the sequence that the district
24 court goes second, I think in your -- I think we're
25 going to be asking Your Honor to make

1 determinations about which one is most likely to be
2 approved by the district court, or whether or not a
3 particular transaction is likely to be approved by
4 the district court. I don't know that that's
5 something Your Honor wants to do.

6 And so a modest proposal, just like we had
7 with today's hearing, I don't know that it would be
8 the end of the world to file a request with the
9 district court and perhaps have a joint status
10 conference involving Your Honor and the district
11 court and just find out what the answer is.

12 If Your Honor and the district court work out
13 how to sequence it, that's great. But from a
14 perspective of trying to keep professional fees
15 down -- and I think everybody else in the courtroom
16 knows, I will indicate we're here pro bono. I
17 recognize no one else is, or very few people may
18 be.

19 So we recognize the more court process there
20 is, the higher the administrative burn. Having a
21 quick conference with the district court and Your
22 Honor to make sure everybody's on side as to how to
23 proceed about the interaction, I think would be
24 helpful in that regard.

25 And then, finally, I just want to address a

1 few additional points. I think that the comments
2 about the Creditors Committee disclosure statement
3 being potentially a visionary scheme, all of that,
4 with the -- I think all of that is, frankly,
5 curable, with one exception. And the way that I
6 see it is the Debtors are concerned that there's no
7 signed purchase agreement and the contracts to
8 assume or reject.

9 There's a draft purchase agreement that's been
10 circulated amongst the purchasers. It's based upon
11 the purchase agreement that the Debtors have used
12 with the stalking horse. We can share that in due
13 course. And, frankly, my experience is that that's
14 the kind of thing that is submitted as a plan
15 supplement and is not as part of a disclosure
16 statement. But, in any event, we can get the
17 Debtors comfortable with that.

18 The contracts to assume and reject, frankly
19 there's an issue that we need the Debtors'
20 assistance in in order to be able to give them that
21 issue, and that has to do with the fact that we're
22 not under NDA.

23 A timeline -- we can disclose the timeline,
24 and I know the suggestion was give us 30 days, and
25 within 30 days if we don't have the money, we're

1 out of luck.

2 30 days is too short, Your Honor. We've told
3 the Debtors before that we needed something like 60
4 days. We also asked -- and please don't make those
5 60 days be the summer, because it's very difficult
6 to reach some of these high network people at that
7 time. It is what it is. We understand that 30 of
8 those days is going to turn out to be August. But
9 30 days is too short. Something like 60 days would
10 be potentially achievable and we're happy to work
11 with the company about that.

12 And the one thing that I don't think we can
13 fix is that -- and this isn't a disclosure problem,
14 this is just life -- that we're not able to post a
15 deposit that will be forfeited. Even if we had the
16 money, we couldn't do that. Even if I had \$19.2
17 million right now, none of that would be
18 contributed to me or to the project under the idea
19 that some of it could be forfeited if we don't
20 obtain the objects. It's for the objects.

21 I think that's it, Your Honor. Again, I
22 appreciate the Court's time.

23 We're looking for a fair process. We're not
24 looking for an overly long process. This is not a
25 visionary scheme. It's backed by very appropriate

1 people. And we'll know in fairly short order
2 whether or not it's successful or not.

3 Thank you, Your Honor.

4 THE COURT: Thank you very much. Thank you.

5 MR. CHUBAK: Jeffrey Chubak for the Creditors
6 Committee.

7 THE COURT: Mr. Chubak.

8 MR. CHUBAK: I'd like to just address a few
9 quick points omitted by Mr. Graulich, and to
10 address several points raised by Mr. Winsberg.

11 The first is the notion that this plan has
12 been proposed by the Creditors Committee for the
13 benefit of the James Sanna. That couldn't be
14 further from the truth. James Sanna is the
15 principal of both Running Subway, a proposed
16 purchaser, and committee member, TSX Operating
17 Company. However, he wasn't party to the
18 deliberations and didn't vote on the decision to
19 propose this plan.

20 The plan and disclosure statement are signed
21 by the committee chair, Thomas Braziel. The third
22 member of the committee, Ezra Jones, on behalf of
23 is Dalian Hoffen Bio-Technique, is present, and if
24 asked to testify, would testify that he supports
25 the plan as well.

1 In addition, we wouldn't have proposed the
2 plan if we didn't believe it provided superior
3 recoveries to creditors.

4 Now, formulating a detailed analysis is a
5 little complicated because we're not getting the
6 cooperation that we need from the Debtors to do so.
7 However, based upon the numbers the Debtors have
8 provided, if you take those numbers, adjust the
9 purchase price and unwind the PacBridge settlement,
10 we believe that the recoveries under our plan are
11 up to 11 percent higher than that provided under
12 the Debtors' proposal.

13 We wouldn't have proposed this plan if we
14 didn't believe it was in creditors' best interest.

15 We've shared our analysis with the Debtors and
16 they haven't responded to it, to dispute it or
17 otherwise respond to it.

18 Now, we recognize this isn't intended to be a
19 disclosure statement hearing, but the Debtors have
20 raised issues with the disclosure statement that
21 has been filed, and we agree that the vast majority
22 of the issues raised are disclosure issues that
23 could be easily addressed if the Debtors were to
24 cooperate and allow the museum to come under NDA
25 and formulate an APA.

1 The Debtors shouldn't be rewarded for ignoring
2 requests by myself and the museum to come under NDA
3 so that we can fulfill our obligation as estate
4 fiduciary to put forth what we believe is the best
5 result for creditors.

6 Now, we recognize that this is a status
7 hearing and, given where we are now, we don't think
8 it's appropriate to hold the museum's feet to the
9 fire and say you have 30 days to raise the money.

10 The museum's ability to raise money is a
11 feasibility issue, but a feasibility issue should
12 not be decided based on the museum's ability to
13 raise money within 30 days. The fundraising
14 process has commenced, and that's not what the
15 feasibility requirement of 1129 requires.

16 Thank you, Your Honor.

17 THE COURT: Thank you. Thank you, Mr. Chubak.
18 Mr. Gurfein.

19 MR. GURFEIN: Thank you, Your Honor. If it
20 please the Court.

21 I think it's worth noting that it was private
22 capital that first discovered the wreck and
23 salvaged the artifacts from the Titanic. It was
24 private capital that funded the company that
25 displays and conserves the artifacts.

1 And we're dealing here with one of those rare
2 cases where the liquidation value of the estate far
3 exceeds its going concern value, and that's the
4 value that we expect to preserve for equity
5 holders, for the benefit of creditors as well.

6 We did submit a disclosure statement with the
7 liquidation analysis based on numbers provided by
8 the Debtor that shows 100-cent distribution to
9 creditors.

10 I was struck also by the suggestion that this
11 is a litigate first type of case. I think Your
12 Honor can bear witness we're in excess of 1,100
13 docket entries on this Court's docket, and you'll
14 find six entries where the Equity Committee opposed
15 a motion by the Debtor.

16 On the other hand, you'll find, if you recall,
17 in January 2017, after the Debtors had refused to
18 talk to either committee for six months, we said we
19 hope to have a consensual plan, and within three
20 months we had a plan support agreement. We had
21 support for the Debtor with respect to extensions
22 of exclusivity. We had support and joinder in a
23 sale motion, but unfortunately that sale did not
24 succeed.

25 So to suggest that this was not -- that this

1 is a case that has been driven by litigation, I
2 think, is a misstatement.

3 What we heard today is a suggestion that the
4 plan proposed by the Equity and the disclosure
5 statement, well, they're unfeasible and cannot be
6 confirmed.

7 And I found it interesting, Your Honor -- and
8 this is a point raised by the museum's counsel --
9 that in the district court all we ask also is for
10 fairness, that we be put on a level track. And I
11 noted that the Department of Justice, on behalf of
12 NOAA, filed a reply to a response to the Debtors'
13 approval motion in which they note that the Debtor
14 has filed a periodic report, dated July 9th, in
15 which the Debtor informed the district court that
16 the Creditors Committee plan is infeasible, legal
17 and factually deficient, and that the Creditors
18 Committee plan is legally and factually deficient.
19 And I am quoting that correctly from the periodic
20 report.

21 Your Honor, we haven't even filed a pleading
22 in the district court, and the Debtor's already
23 litigating against us. That's the fairness that
24 we're looking to bring back to this case.

25 The bid procedures -- I think it'd be a fine

1 idea if we had the bid procedures heard and the
2 sale motion heard. What we ask is that they all be
3 heard on a single track.

4 The bid procedures have a lot of problems with
5 them, and if this were a big procedures hearing
6 instead of a status conference, we would have filed
7 objections, noting, for example, that the bid
8 procedures are set forth in the Debtors' Asset
9 Purchase Agreement, there's another set of bid
10 procedures that's set forth in a summary in the
11 sale motion, and there's a third set of bid
12 procedures that's set forth as an exhibit to the
13 proposed form of order. And those bid procedures
14 are inconsistent, so we don't know which bid
15 procedure is actually the one that's being
16 contemplated.

17 If you look at the bid procedures, you'll see
18 that potential bidders are those that are invited
19 by the Debtors' financial advisor to bid, and
20 rather than doing due diligence and then submitting
21 a bid, they're required to approve financial
22 wherewithal before they're even entitled to do due
23 diligence.

24 I don't want to go into all of the objections,
25 Your Honor -- there will be time for that -- but

1 the procedures that are before Your Honor are rife
2 with provisions that will chill the bidding and
3 tilt the process toward the chosen stalking horse
4 bidder.

5 I note also that one of the objections made by
6 the Debtors today was that the Equity Committee
7 plan lacks funding, and yet earlier today we sent
8 over to Debtors' counsel a term sheet for exit
9 financing that has been entered by the Equity
10 Committee with the funding source.

11 The ability of the Equity Committee to fund
12 its plan is something subject to an evidentiary
13 hearing. That's not for today, but, Your Honor,
14 we're capable of demonstrating that.

15 What we would propose, Your Honor, you have
16 three liquidation scenarios before you, and we ask
17 that they run on a single track, and there's no
18 reason that track could not terminate before
19 December. October, I think, would be a stretch,
20 but there's certainly no reason it could not be
21 completed within 90 to 120 days.

22 I would suggest that there be a single
23 disclosure statement. The Debtor has the benefit
24 of seeing the disclosure statements prepared by the
25 Equity Committee and the Creditors Committee. The

1 Debtors have control of the information flow. It
2 would not take the Debtors very long to review the
3 disclosure statement, input those sections that
4 they disagree with based on the financial
5 information that the Debtors have, and then permit
6 the Creditors Committee, the Equity Committee and
7 the Debtors to submit different sections supporting
8 their respective proposals.

9 A single ballot, as noted by counsel to the
10 museum, would be a good idea, too. We have three
11 proposals. Let the stakeholders of the estate
12 indicate their preference.

13 And it's important to note also that, while
14 balloting is important and the determination as to
15 which, if any, plan the different classes of
16 creditors and equity holders support, that is a
17 consideration for the Court. It is the Court that
18 ultimately will determine which is the best plan,
19 using the votes of creditors and equity holders as
20 one of the elements for Your Honor's consideration.

21 A single plan, confirmation and sale hearing
22 could be conducted, at which Your Honor determines
23 whether to approve the sale or to confirm a plan.

24 And we would respectfully suggest that the
25 admiralty court or the district court and Your

1 Honor confer. We would have absolutely no
2 objection to Your Honor conferring with Judge Smith
3 with respect to all of those items.

4 We would suggest that, rather than litigating
5 twice in two different courts, we simply combine
6 pleadings so that each pleading filed before Your
7 Honor is filed before Judge Smith at the same time.

8 It seems to us that coordinating a hearing
9 with Your Honor's determination in advance with
10 respect to the bankruptcy estate and the bankruptcy
11 issues would make sense, followed by Judge Smith's
12 determination. But if Your Honor and Judge Smith
13 confer, you may determine otherwise, or you may
14 determine that a single hearing be held. With
15 video or telephonic appearances, we could hold one
16 hearing, Your Honor, and the Equity Committee would
17 not oppose that as well.

18 I think we also have to come out of here with
19 a proposed timeline for when these hearings would
20 be held so that whatever discovery is required
21 could be conducted in a reasonable period of time.

22 Although the Debtors suggest that they
23 complied with the Lionel criteria, we respectfully
24 disagree. I noted, among other things, that in the
25 approval motion filed before Judge Smith, the

1 Debtors indicated that once the bankruptcy court
2 has approved the sale, they will then disclose to
3 Judge Smith who the management and board of
4 directors would be of the purchasing entity. If
5 this were conducted with appropriate disclosures as
6 a plan and disclosure statement, we would know in
7 advance of the confirmation hearing who the
8 directors would be.

9 And I raise that, Your Honor, because in the
10 term sheet that originally was proposed, there was
11 an indication that the stalking horse bidder was
12 free to negotiate with management and employees
13 over a management incentive plan.

14 We've asked about that, but the last we've
15 heard was the notation in the term sheet that there
16 was going to be negotiation over a management
17 incentive plan. We don't know where that went. We
18 don't know what's happening with that. A
19 disclosure statement would require that to be
20 disclosed.

21 Another pleading that I read with interest
22 from the district court was the Debtors' reply to
23 the United States. The United States filed a
24 response to the approval motion, noting among other
25 things that NOAA was taking the position that the

1 covenants and conditions required all of the
2 artifacts to remain in one collection. And the
3 Debtor filed a pleading in which, frankly, was a
4 pleading that I thought could have been filed by
5 the Equity Committee, noting that in fact the
6 language in the covenants with respect to a single
7 collection were predatory and aspirational, but
8 that the French artifacts are clearly not within
9 the jurisdiction of the district court.

10 And you have to wonder why, if the Debtor is
11 selling to a third party and will no longer be
12 involved in the artifacts, why the Debtor is
13 concerned about shoring up the identity of the
14 French artifacts as not being within the
15 jurisdiction of the district court.

16 If the proposed purchasers have an intention
17 to sell the French artifacts in the future, they
18 would be realizing upon the value that the Equity
19 Committee believes should be realized upon now
20 while the assets are before Your Honor. And if
21 they have no intention of selling the French
22 artifacts separately, perhaps we can talk about
23 impressing a trust upon those artifacts, so if at
24 some time in the future they are sold, creditors
25 who are not made whole, and Equity, who is not in a

1 position to realize on that value, will be able to
2 realize upon those values in the future.

3 These are all things that we can talk to the
4 Debtors about, talk to the Creditors Committee
5 about, talk over the next 30 days or so.

6 It would be our request, Your Honor, coming
7 out of this status conference, that we do set a
8 timeline. We believe that the Debtor should be
9 operating under a plan at this late date in the
10 case disposing of all of the assets so that
11 stakeholders will have a direct opportunity to have
12 a voice in that decision.

13 The Debtors already have a plan on file that
14 they withdrew that could be modified readily, and
15 they have two disclosure statements from which to
16 work to shore that up.

17 Within two weeks, three weeks, we should be
18 able to have a disclosure statement that we all can
19 agree upon and have a hearing some 30 days out, 40
20 days out, to determine whether the disclosures are
21 appropriate, adequate and sufficient. Let a ballot
22 be created that can go out to all of the stake-
23 holders for their vote so that Your Honor will have
24 the benefit, at least, of their views. 30 to 45
25 days past that, we're into late September, early

1 October, maybe even late October.

2 That is a very feasible timeline. It permits
3 all of the interested parties to have their views
4 known. It permits an opportunity for evidence to
5 be presented to Your Honor and not just argument.
6 And it gives all of the parties the opportunity to
7 realize upon the value that we believe exists in
8 this case.

9 Unless Your Honor has any questions, I'll sit
10 down at this point.

11 THE COURT: Thank you very much. I appreciate
12 your thoughts and your explanations. Thank you
13 very much, Mr. Gurfein.

14 MR. GURFEIN: Thank you, Your Honor.

15 THE COURT: Would anyone else in the courtroom
16 like to be heard?

17 MR. BURNETT: Thank you, Your Honor. Jason
18 Burnett appearing on behalf of 417 Fifth Avenue and
19 Luxor.

20 Your Honor, first, I'd like to compliment all
21 counsel. I agree with all of them and I disagree
22 with all of them. I've had the opportunity to
23 speak to all of them. I do represent approximately
24 40 percent, by some calculation, of the unsecured
25 claims, and I find that has rendered me funnier and

1 physically more attractive than I've ever been
2 before in my life, and they -- they're not laughing
3 because they've heard that joke, Judge, six times
4 already.

5 The truth of this is we find ourselves in a
6 bit of a hash with this case.

7 I do like Mr. Gurfein's idea of extending time
8 for all parties in trying to get all three options
9 put together. Obviously my client loves the idea
10 of an auction. We love the idea of the National
11 Maritime Museum bringing more money to the table.
12 And we really love the idea of being paid 100 cents
13 on the dollar as contemplated by the Equity
14 Committee.

15 We realize that -- well, I would like to
16 encourage counsel that those are not all mutually
17 exclusive ideas, and I believe that there is enough
18 brain power in this room, and certainly the talent
19 is truly astounding, that there has to be a way
20 out, and that I think we do need more time. And I
21 understand that that risks the loss of the sale
22 contemplated by the Debtor at this time.

23 And certainly speaking on behalf of my
24 unsecured creditor client, we're willing to run
25 that risk, with the options -- with the other

1 options that are on the table. And that's with no
2 disrespect to the Debtor and their counsel and/or
3 the proposed buyer, the stalking horse bidder, but
4 we do believe that more time is appropriate.

5 We find ourselves two years into this case,
6 and I would be remiss if I didn't say that I'm a
7 little dissatisfied with the fact that the Debtor's
8 not filed a plan and disclosure statement, and that
9 would make it easier to compare apples to oranges.

10 I don't think the disclosure statement has to
11 be that complicated in this case. And I do believe
12 that the Debtor has the information that would be
13 useful and helpful to this Court to move the case
14 along.

15 I stood here two years ago, Your Honor, and
16 believed 100 percent exactly what the Debtor said,
17 that this case was -- there was tremendous value
18 here, that the French artifacts could be sold, and
19 that creditors would be paid 100 cents on the
20 dollar. And, again, my apologies to everybody
21 that's heard me tell the story, the reason I
22 believed that was because of a New York Times
23 article from 2015 that a single packet of Saltines
24 from a lifeboat had sold at auction in England for
25 \$23,000, so for 15,000 pounds.

1 So we have 5,500 artifacts here, and I'm just
2 stunned that the value would render a result of
3 only approximately right now 50 to 60 percent to
4 the unsecured creditors. If the stalking horse
5 bidder is the successful bidder, that's where we
6 end up.

7 I'm also mindful, Your Honor, that we have
8 approximately \$12 million of unsecured claims and
9 we have \$6 million of professional fees in this
10 case. And I did ask some of the counsel from New
11 York, and they say this is unusual even in New
12 York.

13 So I am hopeful that the Court will fashion an
14 order that gives all the parties more time to
15 hopefully come to a consensual resolution, but, if
16 not, to provide alternatives that can be reviewed
17 upon evidence and proper objection by all the
18 parties and an order made by the Court.

19 Thank you, Your Honor.

20 THE COURT: Thank you, Mr. Burnett. Thank you
21 very much. Thank you.

22 MS. FELDSHER: Thank you, Your Honor.
23 Jennifer Feldsher from Bracewell on behalf of Alta
24 and Apollo.

25 Your Honor, I rise only briefly -- I'm sure

1 the Debtors will address many of the arguments that
2 have been made by the National Museum and the
3 Equity Committee, and I will try very hard not to
4 steal their thunder.

5 I rise only to talk about this notion that's
6 been thrown around here of fairness. And Mr.
7 Burnett talked about New York fees. I will also
8 tell you that this notion of fairness being thrown
9 around here is also very different where I come
10 from as well, and I think it's different in this
11 Court as well.

12 So let's talk about fairness. Our client, my
13 clients, have been working with the Debtors since
14 late last year to try to get to a transaction. Mr.
15 Grossman's client has been working even longer.

16 During that time, the Debtors have
17 consistently delayed, delayed, delayed, hoping for
18 a better transaction, have taken what we would call
19 extraordinary efforts in spacing out negotiations
20 in order to give every single potential opportunity
21 more time. So we have effectively been out there
22 trying to get to a transaction since late last
23 year.

24 We are the only party in this courtroom that
25 has posted a deposit. We're the only ones with

1 money at risk today in an escrow if we do not close
2 our transaction.

3 The National Museum -- Mr. Graulich got up and
4 said: We can't post a deposit.

5 Well, I would say that was a bit tongue in
6 cheek. It's possible that the National Museum
7 which doesn't have the funds can't post a deposit,
8 but Running Subway, their partner, who's a
9 competitor of the Debtors, who's a normal
10 corporation, can certainly post that deposit. They
11 are choosing not to, and they are asking the Court
12 to not create a level playing field for all bidders
13 which an open auction would do, but rather to
14 provide special procedures just for them so that
15 they can make a bid, have no money at risk, and try
16 to get -- what you heard Mr. Graulich tell you is:
17 We'll try our best.

18 And that's not fair. That's very different
19 than where my clients find themselves, which is
20 with a deposit in the bank and at risk if they
21 choose not to close.

22 Now, the transaction, once again, just to
23 compare the fairness, we're the only party that's
24 interested in this courtroom today in buying this
25 asset as a going concern. We are interested in

1 buying the business, preserving the assets and the
2 jobs of the employees at the company today.

3 Both the Equity Committee and the Creditors
4 Committee are fine pushing the Debtors to the brink
5 financially, because what they want are the
6 artifacts, which, by the way, you've heard the
7 Debtors tell you aren't being preserved in the way
8 that they're supposed to be preserved.

9 But we, the stalking horse bidder in the case
10 at this point, is also being pushed to the brink,
11 because it is very likely that, while we wait for
12 the National Museum to raise money from, I don't
13 know, some donors that have put in support but no
14 cash, and while we wait for the Equity Committee to
15 conduct an auction that we have personally looked
16 into and will take months, if not years, of
17 litigation, this business is not going survive and
18 we're not going to be able to buy it as a going
19 concern.

20 So the process should be fair, Your Honor, and
21 I agree with Mr. Graulich saying that. But in
22 order to make it fair, we need to have the same
23 rules for participation for every party, and we
24 need to engage in a process where every party is
25 bound by exactly the same obligations and risks.

1 And if you push this business to the brink, you
2 should have a financial penalty for doing that.

3 Your Honor, our clients have finalized an APA.
4 We've disclosed our group fully, and the financing
5 that we have that is committed financing, and we're
6 being required right now to bid against
7 aspirational plans.

8 Mr. Graulich was very candid here, and I
9 appreciate that. He said to the Court: We hope to
10 get the financing, we might get it before
11 confirmation. And I believe I noted that he said:
12 We might actually get to confirmation and still not
13 have the funding necessary, but we think we'll give
14 you, Your Honor, enough on the record to establish
15 feasibility at some time in the future.

16 That's inherently unfair for us to have to bid
17 against something like that. They can put any
18 dollar amount out there, Your Honor. Even if we
19 came back and said: Okay, we'll match that dollar
20 amount, they can just put a higher dollar amount.
21 It doesn't matter they have no money at risk and
22 they don't have any funds committed today for any
23 transaction.

24 So, finally, Your Honor, one last note on
25 fairness to Mr. Gurfein's presentation. Nobody

1 wants to take the financial risk of these assets,
2 Your Honor. This company has been in bankruptcy
3 for two years. It's been shopped for essentially
4 all two years. Nobody has stood up and put their
5 money where their mouth is.

6 And now Mr. Gurfein suggests that they'd be
7 happy to take a free ride on any upside that the
8 only party who's willing to put any money at risk
9 is going to ever see from the transaction. That's
10 the definition of unfairness, and I don't care what
11 state you're from.

12 So, Your Honor, I believe everybody's had
13 ample time. I believe this Debtor has had ample
14 time. I believe that the Debtor is telling you
15 they are out of time, and we see that as well from
16 our diligence into the Debtors, and we are very
17 concerned that we will not be able to buy this
18 asset as a going concern, which is what we want to
19 do.

20 We understand the lure for the Debtors of
21 giving the parties and the museum a little more
22 time to raise their money. We don't agree with it,
23 obviously, but some of that is a bit self-serving
24 for us, but we understand that lure.

25 But we ask Your Honor to set a hearing for the

1 bidding procedures so that we can preserve the
2 value of this business and we have a chance to buy
3 it as a going concern. We think that's only fair
4 after all of the time that we have expended and the
5 resources. And Your Honor knows -- I've been
6 before the Court several times -- getting to this
7 point and getting to a signed APA, it was not easy.

8 When Mr. Winsberg tells you about fatigue,
9 that isn't a reason to do one thing or another, but
10 there was a call that he recalled to me where I got
11 on the call and I said: I surrender. I cannot do
12 this anymore. This is taking too long.

13 And I don't say that lightly, Your Honor, and
14 hopefully you've gotten a feel for my personality a
15 bit in the times I've been before you.

16 So, Your Honor, we ask for you to set the
17 bidding procedures hearing and to approve a fair
18 and open process for everybody, where we can
19 participate and other parties can participate, but
20 on a level playing field.

21 THE COURT: Thank you. Thank you very much.

22 MR. GROSSMAN: Good afternoon, Your Honor.
23 Scott Grossman of Greenberg Traurig. As Ms.
24 Feldsher said, we're co-counsel to the stalking
25 horse purchaser.

1 I obviously adopt everything Ms. Feldsher
2 said.

3 I just wanted to come up and raise one other
4 point that was addressed by other parties, and that
5 is dealing with what we call the admiralty court or
6 the district court for the Eastern District of
7 Virginia.

8 Your Honor, we have thoroughly studied the
9 covenants and conditions and the requirements, and
10 negotiated extensively with the Debtors to come up
11 with the transaction structure we came up with in a
12 manner that we think provides the easiest path
13 toward approval.

14 I think what's being suggested by other
15 parties is unworkable, unnecessarily complicated,
16 and just not necessary.

17 Your Honor, the approval process here is not
18 unlike the approval process Your Honor has
19 encountered in other regulated industries, airline
20 cases, health care cases, the like. You have run
21 the full process in the bankruptcy court. The
22 Court determines who is the winning bidder, and
23 then the parties go and get their regulatory
24 approval.

25 This is no different. We would run the

1 process here, you would determine the winning
2 bidder, and then you go before the admiralty court
3 and seek the admiralty court's approval of
4 everything that Your Honor has done and approved
5 the winning bidder.

6 We think that's a very straightforward,
7 efficient and streamlined process, and anything
8 else proposed would really be unnecessarily
9 complicated.

10 And obviously Mr. Wainger, the expert on the
11 admiralty court issues I'm sure can weigh in, but
12 bottom line, Your Honor, we ask you to set our bid
13 procedures down for hearing promptly and in short
14 order.

15 Thank you, Your Honor.

16 THE COURT: Very good. Thank you. Thank you.
17 Yes.

18 Let me first ask if anyone else in the
19 courtroom would like to be heard.

20 (No response.)

21 THE COURT: No?

22 Would anyone by conference telephone like to
23 be heard?

24 (No response.)

25 THE COURT: No? Thank you very much. All

1 right.

2 MR. GRAULICH: Your Honor, for one moment,
3 when you say "to be heard," I'm happy to go after
4 the Debtors, but I do have like 45 seconds of
5 response to --

6 THE COURT: Yes. I'm assuming that you'll
7 respond to some of the comments that are made, and
8 then you're welcome to respond to that.

9 MR. GRAULICH: Thank you.

10 MR. WINSBERG: Thank you, Your Honor. For the
11 record --

12 THE COURT: Thank you.

13 MR. WINSBERG: -- Harris Winsberg for the
14 Debtors.

15 I'll be brief, Your Honor. And then Mr.
16 Wainger's in the courtroom. We understood these
17 issues were going to come up today, and he may
18 address the Court on specific admiralty issues for
19 Your Honor real briefly.

20 From the Debtors' perspective, just a couple
21 of points. The Debtors, in the four months that
22 I've been in the case and before that time, Your
23 Honor, the Debtors worked every potential bidder to
24 find the best price for these assets, and we waited
25 as long as we humanly possibly could before we

1 signed a purchase agreement with Apollo, Alta and
2 PacBridge.

3 Would we have liked the purchase agreement to
4 have been more money? Yes. Would we have liked
5 there to be a better recovery for the creditors and
6 equity? Yes. But this is what the market has
7 borne, and by evidence by that is not just the
8 stalking horse offer, but the offer put in by the
9 Maritime Museum.

10 The companies just can't -- we can't sustain
11 any further delays on this point, Your Honor.
12 They're out of money. They're out of time.

13 This idea that we would do a joint disclosure
14 statement -- I heard Mr. Gurfein say that it would
15 take weeks. Well, Your Honor, it's a complete
16 waste of estate resources to put the Debtors in a
17 position where working on doing a joint disclosure
18 statement with two disclosure statements that are
19 unfeasible. Neither party currently has two
20 nickels to rub together.

21 So it makes no sense to waste further -- we're
22 talking about attorneys' fees and costs and
23 administrative expenses, and it makes no sense to
24 continue to run that meter for a process. And if
25 the plan support agreement, which was before my

1 time, but I've talked to Mr. Cavender, now Judge
2 Cavender, and if the subpoena negotiations -- and
3 Mr. Brooks is in the courtroom -- is any
4 indication, it's not going to get done in two
5 weeks. If we get there, it will be months from
6 now.

7 We have no confidence -- and you've seen the
8 dysfunction in this courtroom -- that we'd be able
9 to negotiate, even if we believed it made sense,
10 that we'd be able to negotiate a joint disclosure
11 statement and plan.

12 Mr. Dobbs, who is probably the most well
13 respected mediator in the country, in my humble
14 opinion, could not settle this case, Your Honor.

15 So the notion the parties are going to break
16 away for a couple of weeks and try to negotiate a
17 disclosure statement, all the while risking the
18 only deal on the table that has the money that
19 actually will close and preserve the company,
20 preserve the artifact collection and save 150 jobs,
21 is just -- it's just ludicrous, and we respectfully
22 submit that's not a good path forward.

23 A couple of other points, Your Honor, just to
24 put the record straight. There is no management
25 incentive plan that's in place between Mr. Daoping,

1 the CEO, and the stalking horse purchaser. The
2 Debtors represented that in their motion to
3 reconsider that we filed with the Court, I believe
4 it was last Monday, and Ms. Feldsher and Mr.
5 Grossman can stand up and they are willing to put
6 declarations from their clients that there is no
7 deal. There is no side arrangement. I don't know
8 why that keeps getting brought up.

9 As to the Equity Committee on their financing,
10 they have a non-binding, not firm commitment --
11 what I saw was a non-binding term sheet for up to
12 \$7 million. That's sufficient to refi the current
13 DIP loan of \$5 million, provide a little bit of
14 runway for the company, but won't confirm a plan
15 because it doesn't provide -- that's not enough
16 money to pay the secured lender, which is owed \$4
17 million, the admin claims, whatever Your Honor
18 finally approves, along with the priority claims.

19 So they don't have -- even if you were to
20 consider what they have right now, it's not
21 sufficient to confirm a plan.

22 And, finally, Your Honor, as to the Creditors
23 Committee, there was a discussion about not being
24 cooperative.

25 We've provided every piece of paper in

1 connection with the Debtors' Asset Purchase
2 Agreement to the Creditors Committee. What Mr.
3 Chubak is talking about as part of the Asset
4 Purchase Agreement is a seller disclosure letter, a
5 voluminous due diligence document that we provided
6 to both committees, the Equity Committee and
7 Creditors Committee, but we haven't provided to the
8 museum. Should the museum come up with the money,
9 we'll provide it to them. It's as simple as that.

10 And the last point, Your Honor, if we do a
11 joint disclosure statement hearing, the idea -- and
12 the New York landlord mentioned an auction. The
13 idea that anyone in their right mind would
14 participate in an auction process when they know,
15 even if they would win, that some other party could
16 still win the assets through some other disclosure
17 statement and plan, is just pure fantasy.

18 Doing joint disclosure statements that go out
19 the door like that, you'd ensure that basically
20 you're going to be looking at two private sales.
21 There will be no auction.

22 So for those reasons, Your Honor, we
23 respectfully submit that you set the bid procedures
24 down for hearing. If Your Honor wants to give a
25 very short time frame for the Creditors Committee

1 plan proponents to come up with the actual money,
2 the Debtors are certainly willing to entertain
3 that, as well as to ice the Equity Committee
4 because they're out of the money.

5 With that, Your Honor, with respect to Mr.
6 Wainger, he wanted to address a couple of admiralty
7 court issues, if that was okay with Your Honor.

8 THE COURT: Very good. Thank you.

9 MR. WAINGER: I'm happy to defer to Mr.
10 Graulich, if he would like to respond again. He
11 said he had a few words. I would prefer to respond
12 to all of the issues being raised.

13 THE COURT: Very good.

14 Mr. Graulich?

15 MR. GRAULICH: Sure. Just very briefly, Your
16 Honor, again for the record, Timothy Graulich of
17 Davis Polk on behalf of the National Maritime
18 Museum. Just a few points.

19 The first point is that Ms. Feldsher indicated
20 that -- well, I guess suggested that I had
21 indicated that the Debtors -- that the museums
22 could not post a deposit and that she assumed that
23 that was, quote, tongue in cheek.

24 Quite the contrary, Your Honor. We indicated
25 that we in fact were able to post a deposit, and we

1 offered to post a seven-figure deposit in
2 connection with negotiations with the company to do
3 a transaction.

4 The issue is not about the size of the
5 deposit. The issue is about the nonrefundability
6 of the deposit. If this was just about posting a
7 deposit, we'd be able to do that by the end of
8 today or at the end of close of business tomorrow.

9 Similarly, in the same vein, counsel had
10 indicated that the two committee plans, quote,
11 didn't have two nickels to rub together. That's
12 patently false.

13 We don't have the entire amount, but we
14 certainly -- we are not just, you know, somebody
15 with a hope and a dream here. This is a
16 well-known, well-established, series of museums who
17 have a long history that we have shared with the
18 Debtors and their professionals of fundraising,
19 successful fundraising.

20 We are dealing with important government
21 sources that, frankly, the Creditors Committee has
22 had discussions with because it didn't seem of
23 interest to the Debtors as to -- if we didn't -- if
24 we weren't able to fit within their rubric, it
25 wasn't going to work for the Debtors.

1 So the fact of the matter is, there is money
2 behind this offer even now, it's just that it's not
3 fully committed yet.

4 The third point is, there was an argument
5 that, you know, this is very straightforward
6 because this is no different than any other
7 regulated business, and I'm sure counsel will be
8 more expert on this, but I do think it's -- I'm not
9 convinced that it's not different than other
10 regulated businesses.

11 For example, there are numerous provisions in
12 the conditions that talk about "the court," being
13 the district court, "shall be deemed to have
14 continuing jurisdiction over the subject Titanic
15 artifact collection."

16 That's different than the fact that there is
17 -- that you're involved in a regulated business.
18 There's discussions in here about whether or not
19 certain parts of the collection would be deemed to
20 be property of the estate in the event of a Chapter
21 11 filing.

22 As Your Honor is aware because we previously
23 filed, there's a provision in here that says in the
24 event that there's going to be some type of a
25 transaction with respect to the -- at least with

1 respect to the American collection, perhaps it
2 would be appropriate the district court may remove
3 the reference.

4 So there is a more fundamental jurisdictional
5 question here than I think that you normally see.

6 And, frankly, our solution, I think, is a
7 pretty modest proposal. It's for a status
8 conference in the first instance, so that we could
9 have a discussion with Your Honor, with the
10 district court, to figure out what the most
11 efficient path forward is.

12 Two more points. I'm sure I misheard counsel,
13 but I thought that I had heard that once we raise
14 \$19.2 million, they'd be happy to give us due
15 diligence. I'm sure that's not what was meant, but
16 we're not so sure that that's an appropriate way of
17 dealing with somebody who is -- and it's not just
18 the museum. We're partnered with the -- with a
19 statutory committee. It's appropriate that we get
20 as much -- we're not even talking about discovery
21 -- as much due diligence as appropriate to put
22 together this bid.

23 I'm sorry. I said two more points. Just,
24 again, two more points.

25 I agree with Ms. Feldsher when she indicated

1 that we should be all on the same -- fairness
2 dictates that we should be all on the same terms.
3 But I think her complaints are not about our plan
4 or the Equity Committee plan. I think it's with
5 the Bankruptcy Code.

6 Nothing in the Bankruptcy Code requires a plan
7 to have a nonrefundable deposit. Nothing in the
8 Bankruptcy Code requires a sale to be conducted
9 outside of a plan.

10 So the fact of the matter is -- and, frankly,
11 nothing -- the fact that we said that we would
12 comply with 1129 with respect to feasibility,
13 that's what the Code provides. So the fact that we
14 are not agreeing because for the reasons we
15 indicated earlier year we're just not in a position
16 to, agreeing to not the Bankruptcy Code but a
17 private agreement negotiated with the Debtor, that
18 shouldn't be held against us or, frankly, the other
19 plan.

20 And then, finally, I think there was a
21 statement that indicated that the Debtors and NOAA
22 have resolved their differences as to -- as to at
23 least as between the two of them what they think is
24 going to happen with the district court. I think
25 just in the interest of transparency it would be

1 great if that could be -- if that resolution could
2 be put on the record so as least we understand it.

3 MR. WINSBERG: On that point, Your Honor, just
4 to be clear, NOAA sent us an email about language
5 they would want to resolve their bid procedures and
6 sale objections in the court, and that's what we
7 resolved. It's simple language that just confirms
8 -- and Mr. Troy is in the courtroom -- just
9 confirms that the Debtors are complying with the
10 revised covenants and conditions. There's no --
11 it's nothing more than that. And he's here in the
12 courtroom and he can stand up and speak for
13 himself.

14 THE COURT: Thank you.

15 And thank you very much. Thank you.

16 MR. CHUBAK: I'll be very brief, Your Honor.
17 I just wanted to respond very briefly to the remark
18 by Mr. Winsberg, which is that if the parties are
19 directed to solicit a single disclosure statement,
20 we're going to necessarily result -- it will
21 necessarily chill bidding and it will virtually
22 guarantee an option between two private sales.

23 We don't believe that anyone -- the Debtors'
24 assets have been marketed for over a year, and the
25 stalking horse purchaser -- there's a dispute as to

1 whether the PacBridge parties are an insider or
2 not, notwithstanding the fact that the Debtor has
3 scheduled them as such, but we don't believe that
4 anyone is going to bid at auction. All we want is
5 that creditors be given the -- stakeholders be
6 given the opportunity to select which private sale
7 should be consummated.

8 Ms. Feldsher proposed that Running Subway put
9 the deposit down on behalf of the National Maritime
10 Museum. It shouldn't come as a surprise that an
11 exhibition operator that is partnered with the
12 Debtors -- I wonder why the Debtors describe them
13 as competitors when they've worked together in the
14 past -- should be expected to provide a deposit
15 when it's not the financial power behind this bid.

16 Running Subway is there to pick up the
17 exhibition business because the museum isn't in a
18 position to do so. The bid procedures appear to be
19 designed to exclude the museum from bidding by
20 structuring the deal as such.

21 Further, the Debtors have said that the
22 Creditors Committee plan will yield materially
23 worse recovery because it would delay payments --
24 delay the receipt of consideration for the
25 contemplated transaction relative to their

1 proposal. But distributions to creditors would be
2 delayed under the Debtors' proposal as well since a
3 plan, a liquidating plan, would need to be
4 submitted post consummation -- following
5 consummation of the contemplated 363 sale.

6 As stated in the moving papers filed
7 requesting the status conference, we think the
8 appropriate course is to direct the filing of a
9 joint disclosure statement and have that solicited.
10 We don't think it would take an inordinate amount
11 of time and money. The Debtors just filed a
12 monthly operating report reflecting nearly \$1.5
13 million in the bank. We think there's enough money
14 to give stakeholders the opportunity to choose how
15 these cases should be brought to a conclusion.

16 Thank you.

17 THE COURT: Very good. Thank you. Thank you.
18 Yes.

19 MR. WAINGER: Good afternoon, Your Honor. It
20 has been several months since I've been in front of
21 Your Honor. It's always a pleasure to be here.

22 I note that I'm the 11th lawyer to speak
23 today, and it seems that this is very, very
24 complicated, but it shouldn't be. In fact, I'm
25 here to simplify this for Your Honor.

1 As I was listening to Mr. Graulich speak very
2 candidly about the museum's plan, I've been
3 thinking about why the museum filed a motion to
4 withdraw the reference and take the jurisdiction of
5 this Court and transfer it to Norfolk, which Your
6 Honor will recall happened last year.

7 I thought about that a lot since when it was
8 filed, and as I've listened today to the various
9 lawyers, it became clear to me why they did that,
10 and why they more recently filed an attempted
11 notice to appear in Norfolk, and why the Creditors
12 Committee lawyers and the Equity Committee lawyers
13 would like joint status conferences and a bilateral
14 jurisdiction.

15 It's because the more complicated they make
16 this case, the longer it takes. And the longer it
17 takes, the more likely they are to run out the
18 clock and obtain the remedy they want.

19 In reality, Judge, this is very, very simple.
20 It's just like every other bankruptcy case.

21 The history of the Titanic, the famous
22 people's interest in Titanic, none of that matters.
23 It doesn't matter because there already is a
24 jurisdictional regime in place to ensure that the
25 public interest is taken care of, if in fact there

1 is a public interest.

2 Your Honor, this Court's obligation is simply
3 to apply the Bankruptcy Code. Admittedly, I
4 probably know that less than anybody else in this
5 courtroom. But that's all this is, Judge, apply
6 the Bankruptcy Code. And if we apply the
7 Bankruptcy Code, we understand why we have to talk
8 about the history of the Titanic and the pleadings
9 filed in Norfolk, because it's simple: The estate
10 benefits from the sale process. It's got the
11 money, it's financed, it's ready to go.

12 And you have to excuse that considering these
13 other irrelevant alternatives to appeal to Your
14 Honor why we should overlook the fact that the
15 Equity Committee is out of the money, and we should
16 overlook the fact that the Creditors Committee
17 doesn't have any finance money because these other
18 things matter.

19 And you know what, Judge? They may matter.
20 They may matter to people that care about the
21 Titanic. They may matter to this Court when Your
22 Honor goes and sits and reads the news. But it
23 doesn't matter to this Court's decision, which is
24 governed solely by the Bankruptcy Code.

25 And if we put all this other noise aside and

1 we looked at each other and said: Judge, which is
2 better for the estate? Is it the Creditors
3 Committee plan, the museum's plan that may come up
4 with money or may not, and proposes to never
5 provide a refundable -- a nonrefundable deposit so
6 they can walk away if they're unsuccessful? Of
7 course not.

8 Does the Equity Committee's plan matter when
9 they're out of the money and have been for a long,
10 long time? Of course not. Let's not
11 overcomplicate this.

12 And ironically -- ironically -- it's the
13 covenants and conditions that me and my co-counsel
14 drafted many, many years ago that ensures that this
15 Court can make a simple decision. And it ensures
16 that that court, of which I have been counsel of
17 record for 15 years, has an equally simple
18 decision. Your Honor decides what's in the best
19 interest of the estate, and we go to Chief Judge
20 Smith and we ask for approval if necessary.

21 They are trying to create a problem that
22 doesn't exist, or trying to solve a problem that
23 doesn't exist.

24 For two years, Chief Judge Smith has been
25 aware of this case and virtually every material

1 development in it. And for 15 years, I know that
2 when Chief Judge Smith has a question, I'm hauled
3 down to Granby Street. So if there is an issue, we
4 will know about it.

5 And when I stood in Chief Judge Smith's
6 courtroom in June and said: Judge, time is of the
7 essence, I'm certain the Court understood.

8 Why is time of the essence? Because, Your
9 Honor, 150 people stand to lose their jobs. Time
10 in this case matters. It matters to the Debtors.
11 It does not matter to any other constituent. In
12 fact, we heard that from counsel to the landlord:
13 We need more time. We need more time.

14 We don't have more time.

15 And so that is why we prepared the Norfolk
16 Court to consider whatever ruling this Court makes
17 and to do it on an expedited basis.

18 Judge, at the end of the day, the covenants
19 and conditions makes this Court's job easier. It's
20 no bigger or smaller than any other case. We
21 consider the same statutes and apply the facts to
22 those rules of law. And that's what I'd ask the
23 Court to do and recognize that time matters for
24 these people.

25 THE COURT: Thank you very much. Thank you

1 very much.

2 MR. GURFEIN: May I?

3 THE COURT: Yes, Mr. Gurfein.

4 MR. GURFEIN: Thank you, Your Honor. I, too,
5 will seek to be brief.

6 I just rise to note that all of the issues
7 Your Honor is hearing today are confirmation
8 issues, that these are matters that will either be
9 proven through evidence or not and will be argued
10 at the appropriate time.

11 The value that the Equity Committee sees in
12 this case is not perceived in a clouded crystal
13 ball, but was presented to Your Honor on the very
14 first day of this case by the Debtors themselves
15 when they noted the extraordinary value some of
16 these artifacts had.

17 Your Honor, there are other issues that have
18 been raised that I would defer. I think the Court
19 has heard enough.

20 Thank you, Your Honor.

21 THE COURT: Thank you. Thank you very much.

22 MR. GRAULICH: Your Honor, if I just may --

23 THE COURT: Certainly.

24 MR. GRAULICH: -- briefly respond to the two
25 statements specifically about my client?

1 THE COURT: Certainly, Mr. Graulich.

2 MR. GRAULICH: Your Honor, there was just a
3 very impassioned suggestion that somehow my
4 client's behavior in the district court has been
5 motivated by some attempt to delay.

6 Let me just make the record very clear. The
7 actual words of the conditions says, as set forth
8 in section V(f)(1): Jurisdiction of this matter
9 shall remain in the United States District Court
10 for the Eastern District of Virginia. If, however,
11 another bankruptcy court attempts to exercise
12 jurisdiction over the STAC artifacts, the district
13 court in which the bankruptcy case is pending may
14 have the reference withdrawn under -- and then the
15 reference is to 28 USC 157 -- or transfer venue to
16 this court. And, again, "this court" is the
17 district court under 28 USC 1412.

18 That's why it was done. It wasn't done for
19 some -- it was exactly what was contemplated by --
20 by the conditions themselves.

21 And, secondly, we filed a one-page -- or
22 however many pages it is -- notice of appearance so
23 that we would -- we didn't file any substantive
24 document at all in the district court, and that was
25 met with a tremendous lengthy response about how we

1 have no standing. This is despite the fact that
2 things are being filed in the district court that
3 says that our plan is completely frivolous and
4 lacking in factual and legal merit.

5 We're either going to have an appropriate
6 litigation here or we're not. We aren't interested
7 in filing lots of papers, and that's why we're
8 actually looking for a very simple conference with
9 the district court to make sure that everybody is
10 on the same page.

11 But if we can't appear or be heard in a case
12 where there are factual statements made about us,
13 that's not necessarily a fair way to proceed,
14 either.

15 Thank you, Your Honor.

16 THE COURT: Thank you. Thank you.

17 Would anyone else in the courtroom like to be
18 heard on the status conference?

19 (No response.)

20 THE COURT: No?

21 Would anyone by conference telephone like to
22 be heard on the status conference?

23 (No response.)

24 THE COURT: No? All right.

25 Yes.

1 MR. SIEGEL: Your Honor, this is Howard Siegel
2 on behalf of Euclid Claims Recovery.

3 THE COURT: Yes, Mr. Siegel.

4 MR. SIEGEL: I would just like to follow up on
5 a point made by attorney Burnett in recognizing
6 this is a Chapter 11 case and the primary
7 stakeholders here are creditors. Creditors, who
8 under the proposals, with the exception of the
9 Equity Committee plan, are not being paid 100
10 cents.

11 And under general principle of the bankruptcy
12 law, those creditors should have a right to vote as
13 the primary stakeholders in this plan, and whatever
14 the Court adopts by way of procedures should
15 provide for an orderly process that would allow the
16 stakeholders' voice to be heard.

17 And I'm concerned that, while there are two
18 plans, proposals, there is also a 363 sale proposal
19 that does not involve stakeholder vote, and they
20 have what has been referred to as a level playing
21 field. That would seem to me to be a requirement.

22 And certainly I join with the numerous parties
23 who expressed the sentiment this case needs to come
24 to an end. There certainly doesn't need to be any
25 extended time for the sale proposal, the 363 sale

1 proposal, be made into a plan and it could maintain
2 the same time frame.

3 There's no reason this case can't be promptly
4 concluded, with creditors having the right to
5 express their preference among the different
6 proposals in a matter of several months. And
7 whatever procedures the Court adopts, I would urge
8 that that be part of it.

9 THE COURT: Very good. Thank you very much.
10 Thank you very much.

11 Would anyone else like to be heard, anyone in
12 the court or anyone by conference telephone?

13 (No response.)

14 THE COURT: No?

15 Well, I thank you all very much. I appreciate
16 your positions. I appreciate your arguments.

17 I will consider those as well as I can, and I
18 will not take a long time, because I think we need
19 to get this determination made and the case needs
20 to move. I think that certainly has been pointed
21 out well today.

22 So, once again, I will consider this, make a
23 determination as quickly as I can, and then we can
24 move from there.

25 So I thank you very much. And that concludes

1 the status conference.

2 On the calendar we also have an objection to
3 Claim 29-1 and objection to Claim 2.

4 Would you like to argue those now, or take a
5 brief recess and let people who are not interested
6 in those leave?

7 MR. BROWN: Your Honor --

8 MR. GROSSMAN: We've got a better solution.

9 MR. BROWN: -- we've got another solution.

10 THE COURT: Very good.

11 MR. BROWN: Your Honor, Jay Brown appearing on
12 behalf of the Equity Committee.

13 We have confirmed with Mr. Grossman regarding
14 the Equity Committee's objection to the PacBridge
15 claim, and what we would ask the Court to do is to
16 set that as an evidentiary matter to track with the
17 sale hearing, as I think that there could be
18 evidence that crosses over there. And I understand
19 that Mr. Grossman is agreeable to that.

20 THE COURT: With the sale hearing?

21 MR. BROWN: Yes, Your Honor, that they would
22 track -- we would want that to be the confirmation
23 hearing, too, as the Equity Committee, but it makes
24 sense to be, whatever the ultimate final
25 evidentiary process in the case, they should all

1 run together.

2 MR. GROSSMAN: That's acceptable to PacBridge,
3 Your Honor.

4 THE COURT: All right. Thank you very much.
5 Then we will do that. We will do that.

6 MR. WINSBERG: Yes, Your Honor. That proof of
7 claim, just to close the loop, that's part of the
8 PacBridge settlement that I discussed earlier in
9 the hearing --

10 THE COURT: Right.

11 MR. WINSBERG: -- as part of the Asset
12 Purchase Agreement. So it's subject to a 919
13 motion, which is why the parties would want to roll
14 with that.

15 THE COURT: Very good. Then we will do that,
16 and I thank you for that.

17 There's also an objection to Claim Number 2 of
18 B.E. Capital Management Fund and various other
19 certain improperly asserted claims.

20 MR. BROOKS: Good afternoon, Your Honor.
21 Matthew Brooks on behalf of the Debtors.

22 The wrong debtor claim objections, as I
23 believe what the Court is referring to --

24 THE COURT: Uh-huh.

25 MR. BROOKS: -- those are claims of RMST,

1 Judge, that were classified, that were filed, but
2 were filed against the wrong debtors in the case,
3 Judge.

4 THE COURT: Yes.

5 MR. BROOKS: And the claim objection simply
6 asks that those be reclassified against the
7 appropriate debtors, as set forth in the proposed
8 order.

9 THE COURT: Very good.

10 Would anyone else like to be heard on that
11 objection?

12 (No response.)

13 THE COURT: No?

14 That makes sense. You have the proposed order
15 attached?

16 MR. BROOKS: There is one attached, Judge.

17 THE COURT: Yes, there is.

18 MR. BROOKS: If the Court has any questions,
19 we're happy to address it.

20 THE COURT: Very good.

21 MR. BROOKS: Okay.

22 THE COURT: All right.

23 MR. BROOKS: Thank you, Judge.

24 THE COURT: I thank you all very much. I
25 appreciate your time, I appreciate your arguments.

1 Welcome to Florida for those of you who came from
2 out of state.

3 And, once again, I appreciate your positions.
4 I'll consider them as well as I can and I'll try
5 not to take a long time to do it. So thank you.

6 (At 3:25 p.m., the hearing was concluded.)

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C E R T I F I C A T E

STATE OF FLORIDA)

COUNTY OF DUVAL)

I, Cindy Danese, a Notary Public, State of Florida at Large, do hereby certify that the attached represents the proceedings before the United States Bankruptcy Court, Middle District of Florida, Jacksonville Division, before the Honorable Paul M. Glenn, Bankruptcy Judge, in the matter of In Re: RMS Titanic; such transcript is an accurate recordation of the proceedings which took place. A transcript of this proceeding has been produced on July 30th, 2018.

STATEWIDE REPORTING SERVICE

Cindy Danese